

## **REMARKS**

In the Office Action dated June 24, 2004, the Examiner stated that Applicant's IDS was received on September 24, 2003. Acknowledgment of the receipt of the IDS is appreciated.

## **Specification**

The Examiner objected to the specification because in the Cross Reference to Related Applications, Serial No. 10/263,487 should be referenced as U.S. Patent 6,662,494. By the present amendment, paragraph 0001 has been amended to properly reflect the updated information.

## **Double Patenting**

In the Office Action dated June 24, 2004, the Examiner rejected Applicant's claims 1 - 4, 6 - 10, 11 - 14, and 15 - 21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31 - 40 and 41-50 of U.S. Patent No. 6,523,303 B2.

The Examiner stated,

"Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to a decorative cover or decorative assembly comprising a plant and the cover comprising a base and a decorative border attached to the base with a curvilinear, undulating configuration wherein the border supports the leaves and petioles and is compressed. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly/cover of the instant application to have the border compressed to an angle from 25 to 40 degrees depending upon the plant used which depends upon consumer demand."

The Examiner further stated that the above stated obviousness-type double patenting rejection can be overcome by a timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c). Accordingly, it is respectfully submitted that the above stated rejection has been obviated by the presence of the terminal disclaimer filed herewith.

### **Rejection under 35 U.S.C. §103**

In the Office Action dated June 24, 2004, the Examiner rejected Applicant's claims 1 - 32 under 35 U.S.C. §103(a) as being unpatentable over Charrin (FR 2619698) in view of Ward (US 2,894,258). In support of the rejection, the Examiner stated,

"As to Claims 1, 7, and 8, Charrin discloses a decorative cover (Figs.1-4) for supporting leaves and petioles of a plant having substantial horizontal growth comprising a base (region around leadline of 3 in Fig. 4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses growing African violets (col. 1 lines 55-60) that would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the

cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand.

As to Claim 2, Charrin as modified by Ward further disclose a cover constructed of a flexible sheet, non-shape sustaining material (Fig. 1 of Charrin) and the cover that is flexible, resilient, and shape-sustaining (Fig. 4 of Charrin).

As to Claim 3, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 4, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 5, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 6, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 9 and 10, the limitations of Claim 1 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 to 55 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 to 55 degrees so as to suit consumer demand.

As to Claims 11, 17, and 18, Charrin discloses a decorative assembly (Figs. 1-4) comprising a decorative cover (Figs. 1-4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is a plant with substantially horizontal growth; and, the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses a plant with substantially horizontal growth (col. 1 lines 55-60) which would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand.

As to Claim 12, Charrin as modified by Ward further disclose a cover constructed of a flexible sheet, non-shape sustaining material (Fig 1 of Charrin) and the cover that is flexible, resilient, and shape-sustaining (Fig. 4 of Charrin).

As to Claim 13, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 14, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin.)

As to Claim 15, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 16, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 mil to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 19-21, the limitations of Claim 11 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 degrees so as to suit consumer demand.

As to Claims 22, 28, and 29, Charrin discloses a decorative assembly (Figs. 1-4) comprising a decorative cover (Figs. 1-4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is a plant with substantially horizontal growth; and, the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses a plant with substantially horizontal growth (col. 1 lines 55-60) which would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. It would have been

obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand. The cover of Charrin as modified by Ward inherently perform the method steps recited in Claim 22.

As to Claim 23, Charrin as modified by Ward further disclose a cover ca (sic) be flattened or unflattened (Figs 1-4 of Charrin).

As to Claim 24, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 25, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 26, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 27, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 30-32, the limitations of Claim 22 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 degrees so as to suit consumer demand."

The above stated rejections of the Examiner will be addressed independently herein. However, the rejection of Applicant's claims 1, 11, and 22, the only independent claims in the case, is respectfully traversed and as such, the rejection of each of the claims depending from such independent claims is also respectfully traversed.

Each of Applicant's independent claims, as well as each of the claims depending therefrom, either recite or contain an element relating to a decorative cover configured to support leaves or petioles of a plant having substantial horizontal growth so as to prevent damage thereto. That is, the

configuration of the decorative cover allows for excess material to form a gentle, cushioning pattern to hold, support and cushion each of the individual leaves or petioles. Thus, the decorative cover, as recited in each of the claims, possesses the following properties:

1. The decorative cover has a curvilinear, undulating configuration which permits the decorative border to hold, support and cushion individual leaves and petioles of the plant when the plant is disposed in an object retaining space of the decorative cover and the leaves and petioles are positioned on the decorative border;
2. The decorative cover has a decorative border that has resilient properties;
3. The decorative border has a length greater than at least a portion of the leaves and petioles of the plant positioned thereon;
4. The angle of the decorative border relative to the horizontal axis of the base decreases due to the weight of the leaves and petioles of the plant whereby the decorative border moves toward a compressed condition, thereby permitting the decorative border to resiliently hold and gently support the individual leaves and petioles of the plant to prevent damage thereto and to accommodate horizontal growth of the leaves and petioles of the plant.

Claim 1, and thus claims 2 - 10 which depend therefrom, recite a decorative cover for supporting leaves and petioles of a plant having substantial horizontal growth so as to prevent damage thereto wherein the decorative cover includes the above referenced features and elements.

Claim 11, and thus claims 12 - 21 which depend therefrom, recite a decorative assembly which includes a plant having substantially horizontal growth where the plant has leaves and petioles, and a decorative cover for supporting the leaves and petioles of the plant so as to prevent damage thereto wherein the decorative cover is provided with a decorative border containing the characteristics and/or elements recited above.

Claim 22, and thus claims 23 - 32 which depend therefrom, recite a method for using a decorative cover with a plant having substantial horizontal growth wherein the method includes the step of providing a plant and forming at least one sheet of flexible, non-shape sustaining material into a flexible, resilient and substantially shape-sustaining decorative cover where the decorative cover is provided with a decorative border having the characteristics and/or elements of the decorative border recited above.

For the reasons set forth hereinafter, it is respectfully submitted that the Charrin French patent application 2619698 (a copy of a translation which is provided herewith for the Examiner) does not disclose, teach or even suggest the inventive concept recited in Applicant's claims 1, 11, and 22, and thus each

claim which depend from such claims, and that the deficiencies of the Charrin reference are not supplied by the teachings of Ward (US Patent No. 2,894,258). While it may be true that the Charrin patent discloses certain features, namely a decorative cover comprising a base having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space, a horizontal axis, and a decorative border connected to the base and extending from the open upper end of the base so as to be disposed in an upward and outward angle with respect to the open upper end of the base, and that the border has a curvilinear, undulating configuration. However, there is no teaching in Charrin that the decorative border is adapted to hold, support and cushion individual leaves of the plant having substantially horizontal growth so as to prevent damage thereto as recited in each of Applicant's claims. In fact, when viewing the teachings of the Charrin French application, it becomes clear that by tying the decorative cover across an upper end of the pot that the decorative border of the cover would resist downward compression or else one would, in all likelihood, tear the cover where the connection is made between the cover and the string. Further, as admitted by the Examiner, there is no disclosure, teaching or even suggestion in Charrin that the length of the border be greater than at least a portion of the leaves and petioles of the plant positioned on the border and that the angle of the border decrease so that the border moves to a compressed condition. Therefore, it is respectfully submitted that the Charrin

French application does not satisfy the requirements of a reference under 35 U.S.C. 103 in order to render Applicant's claimed invention obvious.

The Examiner has recognized these defects and attempted to supply such defects with isolated, dissected teachings and/or elements of the detachable potted plant protector disclosed in Ward (U.S. Patent No. 2,894,358). However, Ward discloses a protective device comprising a platform and means to support the platform on the rim of a flower pot so that the platform underlies and supports the stems and leaves of a plant at a safe level out of injurious contact with the flower pot rim. While the patent discloses the use of the device in combination with an African violet plant, the reference teaches that the only contact between the platform and the plant stems and leaves is one of gentle upward pressure (emphasis added). Further, the platform is desirably made of bamboo in its natural state, not painted or otherwise coated, and it is made desirably into a lattice. Other materials which are taught to be suitable for the construction of the platform are plastic materials and lightweight sheet material, such as aluminum.

From the total teachings of the Ward reference, it becomes clear that Ward does not supply the deficiencies of the Charrin French application, and that if one were to apply the teachings of Ward to the Charrin French application that the inventive concept disclosed therein would be destroyed.

However, even more important, if one were to combine the isolated teachings of Ward with the teachings of the Charrin French application to reconstruct the device over which one could maintain Applicant's inventive concept as recited in the claims as obvious, one would, of necessity, provide a decorative border which did not contain the claimed elements and characteristics of the decorative border as recited in each of Applicant's claims, namely, that (1) the decorative border has resilient properties, (2) that the decorative border has a length greater than at least a portion of the leaves and petioles of the plant positioned thereon, and (3) that the angle of the decorative border relative to the horizontal axis of the base decreases due to the weight of the leaves and petioles on the plant whereby the decorative border moves towards a compressed condition, thereby permitting the decorative border to resiliently hold and gently support the individual leaves and petioles of the plant to prevent damage thereto. That is, the support structure of Ward would not be compressible, but would be rigid and as stated by the Ward reference, would provide an upward pressure, not a gentle downward pressure due to the weight of the leaves and petioles as taught by Applicant and as recited in each of the claims of the subject application.

Therefore, it is respectfully submitted that the Examiner's rejection of Applicant's claims 1 - 32 (as amended), under the Charrin French patent

application in view of Ward '258, is improper, contrary to patent law, and should be withdrawn. Such is respectfully requested.

In addition to the rejections set forth above, the Examiner has rejected each of Applicant's dependent claims by reading each of the limitations of such dependent claims in a vacuum and without reference to the independent claims from which such claims depend. That is, for the reasons set forth herein, it is respectfully submitted that Charrin, as modified by Ward, does not disclose, teach, or even suggest a decorative cover having a decorative border as recited in each of Applicant's independent claims, and thus, each of Applicant's dependent claims. Accordingly, the Examiner's rejections of claims 2 - 10, as set forth in the Office Action dated June 24, 2004, are respectfully traversed for the reasons set forth herein, because neither the Charrin French application nor Ward '258, disclose, teach, or even suggest the unique and novel decorative border of a decorative cover as recited in Applicant's independent claim 1 and thus, claims 2 - 10 which depend therefrom.

While certain of the dependent claims may contain limitations which are taught by either of the references, it is respectfully submitted that the individual limitations can not be viewed in a vacuum but must be viewed in light of the limitations of the claims from which they depend and once the references are read in their entirety, and even with reconstruction of the cover taught by the Charrin French application, one does not achieve the decorative cover having

a decorative border as recited in each of Applicant's claims 1 - 10. Accordingly, it is respectfully requested that the Examiner withdraw the rejection and pass same to issue.

As to the Examiner's rejection of claims 11, 17, and 18, as being unpatentable over the Charrin French application in view of Ward '258, it is Applicant's position that the rejection fails for the same reasons herein before discussed with reference to claim 1 and thus, claims 2 - 10, which depend therefrom. For the sake of brevity, such arguments will not be repeated herein. However, for such reasons, it is Applicant's belief that when viewing the total teachings of both the Charrin French application and Ward '258, that such references do not render obvious to one of ordinary skill in the art at the time of the invention the necessary teachings to modify the Charrin reference to reconstruct a plant assembly over which one can maintain Applicant's plant assembly as recited in claims 11 - 21 is obvious. In addition, for the reasons set forth herein, each of the additional limitations set forth in the dependent claims do not render such claims obvious, especially when such dependent claims are read in combination with each and every limitation of the independent claim from which they depend. Accordingly, it is respectfully requested that the Examiner withdraw the rejections and pass such claims to issue.

In the Office Action dated June 25, 2004, the Examiner also rejected Applicant's claims 22, 28 and 29, as well as the other dependent claims on the same basis that the previous claims were rejected. As previously stated, it is Applicant's position that the Charrin French application, even when modified with isolated, dissected teachings of Ward '258, does not render obvious Applicant's invention as recited in independent claim 22, and thus, claims 23 - 32 which depend therefrom. Again, the Examiner has acknowledged the deficiencies of the Charrin French patent application and attempted to supply such deficiencies with selected, isolated and dissected elements of Ward '258. However, as previously stated, Ward teaches that the construction of his platform is such that an upward pressure is provided when the plant stems and leaves contact the platform (see col. 2, lines 34-37). Also, the material set forth in Ward clearly indicates that the materials from which the support platform is fabricated would not be capable of having the desired resilient properties. Further, there is no teaching that the platform of Ward '258 or the skirt portion of the Charrin French patent application having a length greater than at least a portion of the leaves and petioles of the plant positioned thereon, and that the angle of the decorative border relative to the horizontal axis of the base decreases due to the weight of the leaves and petioles of the plant so that the decorative border moves toward a compressed condition, thereby permitting the decorative border to resiliently hold and gently support

the individual leaves and petioles of the plant to prevent damage thereto and to accommodate horizontal growth of the leaves and petioles of the plant as recited in each of Applicant's claims. In fact, there is no motivation for modifying the disclosure of the Charrin French patent application with the teachings of Ward '258, and, as previously stated, Ward teaches away from the invention concept as recited in each of Applicant's claims in that the contact between the platform and the plant stems and leaves is one of upward pressure, not a compressible pressure.

For the reasons set forth above, it is respectfully requested that Applicant's inventive concept as recited in claims 1 - 32, as amended herein, is patentable over the Charrin French application and Ward '258. In addition, there is no teaching, suggestion, or motivation for reconstructing the device of the Charrin French application with the teachings of Ward '258 so as to construct a device over which one could maintain that the reconstructed device renders Applicant's invention obvious or would satisfy the parameters of Applicant's invention as recited in the claims. Therefore, it is respectfully requested that the Examiner withdraw his rejections to the claims as amended, and pass such claims to issue.

### **Prior Art of Record**

The prior art of record has been reviewed and is not considered any more pertinent to Applicant's claimed inventions as the references hereinbefore discussed.

### **Conclusion**

This is intended to be a full and complete response to the Office Action dated June 24, 2004.

Should the Examiner have any questions or comments concerning this Response, the Remarks contained therein, or any other matter, Applicant's agent will welcome the opportunity to discuss the same with the Examiner.

Respectfully submitted,



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